

**COLEGIO CATOLICO NOTRE DAME, CORP
CAGUAS, PUERTO RICO**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	) Colegio Católico Notre Dame Secundario
	) Billed Entity Number 201210
Requests for Review of	) Funding Year 2014
Decisions of the	) Form 471 Application No. 979835
Universal Service Administrator by	) Funding Request No. 2669883
)
Consortium Colegio Católico Notre	) Colegio Católico Notre Dame Elemental
Dame Secundario	) Billed Entity Number 199857
	) Funding Year 2014
	) Form 471 Application No. 979879
	) Funding Requests Nos. 2670047, 2670051
)
	) Colegio San Carlos Borromeo
	) Billed Entity Number 219595
	) Funding Year 2014
	) Form 471 Application No. 987304
	) Funding Requests Nos. 2693193, 2693220
)
	) Academia Inmaculada Concepción Superior
	) Billed Entity Number 159940
	) Funding Year 2014
	) Form 471 Application No. 972245
	) Funding Requests Nos. 2647129, 2647142
)
	) Academia Inmaculada Concepción Elemental
	) Billed Entity Number 219946
	) Funding Year 2014
	) Form 471 Application No. 990843
	) Funding Requests Nos. 2703796, 2703814
)
Schools and Libraries Universal Service	) CC Docket No. 02-6
Support Mechanism)

ATT: Telecommunications Access Policy Division, Wireline Competition Bureau

REQUEST FOR REVIEW

Consortium Colegio Católico Notre Dame Secundario (hereinafter, the "Consortium"),

which is located in the Commonwealth of Puerto Rico, pursuant to Sections 54.719(b) and 54.722(a) of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby petitions the Commission's Wireline Competition Bureau for review of adverse decisions by the Universal Service Administrative Company ("USAC") with respect to the above-referenced Funding Request Numbers ("FRNs") for Funding Year 2014 filed by members of the Consortium.

I. BACKGROUND

The Consortium represents five private Catholic schools in the Commonwealth of Puerto Rico. These five schools have a combined enrollment of approximately 3,147 students in grades K through 12.

On January 15, 2013, the Consortium filed FCC Form 470 No. 296310001099228 on behalf of its members soliciting bids for a number of Telecommunication Services, Internet Access, Internal Connections other than Basic Maintenance, and Basic Maintenance of Internal Connections. The Form 470 is attached hereto as Exhibit A. After the required 28-day period, Consortium members selected Nevesem, which had the most cost-effective bid, as their provider and executed a three-year contract with Nevesem.

On September 15, 2014, USAC sent a Special Compliance Review Information Request ("Information Request") to Mr. Wilfredo Chiclana Díaz, who is the Associate Principal and IT Director at Colegio Católico Notre Dame Secundario. The Information Request alleged that USAC had received information indicating that the service provider Nevesem "assisted you with filing/submitting the FCC Forms 470, 471 and/or 486" and asked several questions. It should be noted that the Information Request is confusing because it refers to two different Forms 470: it refers to Form 470 No. 371410001160074, which *does not* belong to the Consortium, and to

Form 470 No. 296310001099228, which was filed by the Consortium. The Information Request asked Mr. Chiclana to provide the following information:

1. The name, title, employer and contact information of the individual(s) who developed, filled in, completed, certified and/or posted the Form 470 to the USAC website.
2. The specific location from which Form 470 #296310001099228 was filled in, completed, and/or submitted to USAC.
3. Whether a service provider's employee or employees assisted the Consortium with the completion and/or posting Form 470 #371410001160074 (which does not belong to the Consortium) and, if so, who.
4. An explanation of how the Consortium determined the services to request on the Form 470 #371410001160074 (which, again, does not belong to the Consortium) because, according to USAC, the service descriptions listed on the form appear to be "generic" or "encyclopedic."

On September 22, 2014, the Consortium submitted its response to USAC stating:

1. "Mr. Chiclana is the person in charge and authorised [sic] to fill all forms and documents from our schools."
2. The Form 470 was filled by Mr. Wilfredo Chiclana from Colegio Católico Notre Dame Secundario.
3. No service provider's employee or employees assisted the Consortium with the completion and/or posting the Form 470
4. Related to the service descriptions listed on the Form 470, "the information provided, I took it from your Schools and Libraries Universal Service / Support Mechanism / Eligible Services List, that resume listed [sic] the requested services."¹

Copies of the Information Request and the Consortium's September 22, 2014 response to USAC are attached as Exhibit B. Despite the fact that there is something obviously wrong with the language of the above response, USAC did not attempt to clarify the response by asking any follow up questions in either English or Spanish.

On May 4, 2015, USAC issued Notification of Commitment Adjustment Letters ("COMADs") rescinding all of the Funding Year 2014 funding commitments for Priority One services for all Consortium member applicants. Copies of the COMADs are attached as Exhibit C. The COMADs stated the following reason for the rescission:

¹ Because the Information Request made reference to Form 470 # 371410001160074, which does not belong to the Consortium, the Consortium's response mistakenly made reference to that Form in Section C of its response.

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The FCC Form 470# 296310001099228 that established the bidding for this FRN is encyclopedic. Furthermore, a Request for Proposal was not issued to narrow the scope of the desired services to only those that you actually applied for in this funding request. FCC rules require that applicants submit bona fide requests for services by conducting an internal assessment of the components necessary to use effectively the discounted services ordered and submitting a complete description of services requested so that it may be posted for competing providers to evaluate. During our review, you were asked why the service descriptions listed on your FCC Form 470 appeared to be generic or encyclopedic. Specifically you were asked to explain how you determined the services to request on your FCC Form 470. You responded that the services listed in the FCC Form 470 were obtained from the Schools and Libraries Division (SLD)s Eligible Services List available on USACs website at: <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>. Per the FCCs Ysleta Order, an applicants FCC Form 470 must be based upon its carefully thought-out technology plan and must detail specific services sought in a manner that would allow bidders to understand the specific technologies that the applicant is seeking. An FCC Form 470 should not be a general, open-ended solicitation for all services available on the Eligible Services List, with the hope that bidders will present more concrete proposals. Thus, a FCC Form 470 that sets out virtually all elements that are on the Eligible Services List would not allow a bidder to determine what specific services the applicant was seeking. Because you relied on an encyclopedic FCC Form 470, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

On June 25, 2015, the Consortium filed a timely appeal of the COMADs with USAC. A copy of the Consortium's appeal is attached as Exhibit D. On July 17, 2015, USAC issued decisions using exactly the same language as it did in the COMADs and denying the appeal without any discussion (or even a cursory mention) of any of the arguments raised by the Consortium on appeal. Copies of USAC's decisions are attached as Exhibit E. On July 21, 2015, USAC issued Demand Payment Letters to all Consortium members. Copies of the Demand Payment Letters are attached as Exhibit F.

For the reasons stated below, USAC erred when it denied the Consortium's appeal. The Consortium respectfully requests that the Commission reverse USAC's decision and remand the applications to USAC for further processing.

II. THE COMADS RESULT FROM A MISUNDERSTANDING, AND A LANGUAGE BARRIER THAT APPLICANTS FROM PUERTO RICO FACE WHEN PARTICIPATING IN THE E-RATE PROGRAM IS THE ROOT CAUSE OF THIS MISUNDERSTANDING.

The USAC questions sent to the Consortium asked: "Please explain *how* you determined the services to request on your FCC Form 470" (emphasis added). The Consortium understood that USAC was asking how the Consortium determined that the requested services were *eligible* for E-rate funding, not how the Consortium determined the services to request in the Form 470. It is for this reason that the Consortium responded that the services were identified from the Eligible Services List, and stated:

"Related to the service descriptions listed on the Form 470 ... the information provided, I took it from your Schools and Libraries Universal Service / Support Mechanism / Eligible Services List, that resume listed [sic] the requested services."

Of course, the problem with this response is that it tells USAC that the Consortium obtained the services it listed on the Form 470 from the ESL, rather than providing an explanation of *how* the Consortium determined what services to specify on the Form 470. Obviously, Consortium personnel misunderstood the question posed by USAC. This misunderstanding of what USAC was asking is simply due to the fact that USAC's questions were posed in English and the Consortium personnel who prepared the responses are native Spanish speakers who do not usually speak, read or write English. The Consortium responded in a manner consistent with its understanding of USAC's question, but, of course, it misunderstood USAC's question. The draconian rescission of the funding commitments could have been avoided if USAC, cognizant of the fact that most people in Puerto Rico speak Spanish and many do not usually speak, read or write English, had reached out to the Consortium through a Spanish-speaking USAC reviewer.

No one would argue with the proposition that the E-rate program is very complex. The various forms and their instructions, the FCC rules and relevant orders, and USAC's guidance on its website are extremely difficult to navigate even for people whose first language is English. This difficulty is compounded for people whose first language is not English. More particularly for this case, none of these E-Rate Program resources are available in Spanish. Therefore, schools in Puerto Rico are at a serious disadvantage vis-à-vis the vast majority of applicants in the continental United States. Puerto Rico applicants, including the Consortium and its members, struggle to file successful applications while avoiding numerous land mines throughout the E-rate application process that, unfortunately, are not well understood because there is a lack of information and resources in the Spanish language. This is not an insignificant consideration for Puerto Rico for two reasons: first, because its citizens contribute millions of dollars every year to the Universal Service Fund, which funds the E-rate program; and, second, because many of the poorest students in the United States live in Puerto Rico.² USAC should know and take into account that Spanish-language resources for the E-Rate Program are critical when posing questions to Puerto Rico applicants that may lead to the denial of E-rate funding.

In its decisions on the appeals, USAC completely ignored the fact that that the Consortium and its members had obviously misunderstood USAC's question about how the services on the Form 470 were determined. Moreover, as explained below, USAC also ignored critical evidence that demonstrates that the services listed on the Consortium's Form 470 were

² See American Community Survey Briefs, Child Poverty in the United States 2009 and 2010: Selected Race Groups and Hispanic Origin, Table 1, Number and Percentage of Children in Poverty in the Past 12 Months by State and Puerto Rico: 2009 and 2010 (issued November 2011) (indicating that 56.3% of children aged 0 to 17 in Puerto Rico live below the poverty line in 2010).

not generic because many eligible Priority One services in Funding Year 2014 were not included on the Consortium's Form 470.³

III. USAC IGNORED EVIDENCE THAT THE CONSORTIUM DID NOT FILE A GENERIC OR ENCYCLOPEDIA FORM 470.

In its denial, USAC states that "because [Mr. Chiclana Díaz] relied on an encyclopedic FCC Form 470, [the] funding commitment was rescinded in full and USAC will seek recovery of any disbursed funds from the applicant."⁴ However, this statement ignores the fact that, as the Consortium pointed out in its appeal, the Consortium's Form 470 *did not* list all of the Priority One services listed in the Eligible Services List ("ESL"). This is obvious by comparing the Consortium's Form 470 and the ESL for Funding Year 2014. As the Consortium's Form 470 indicates, it sought bids on behalf of its members for the following Priority One services: distance learning circuits and services; local and long distance telephone service; cellular service; conferencing services; maintenance services; fax machine line; interactive TV; frame relay service; wireless WAN; installation services; T1 or fractional T1 lines; basic telephone service; and metropolitan area network.

The Consortium sought bids for Internet access using T1/fractional T1 lines, DSL, fiber or wireless technologies because any one of these technologies represented a feasible conduit access to the Internet for its members. By specifying these technologies, the Consortium sought to provide its members with the flexibility to select the particular solution that best fits their individual needs. The other Priority One services listed in the Form 470 are basic services that

³ In its denials, USAC merely states that, "*In your appeal, you did not demonstrate that USAC's decision was incorrect.*" There is no actual discussion of the record, the arguments and evidence presented by the Consortium, or why those arguments and evidence were found not to be persuasive. Because the denials contain no discussion of these matters, USAC fails to articulate any connection, much less a rational connection, between the facts of this case and the conclusion that the Consortium relied on an encyclopedic FCC Form 470.

⁴ See Exhibit E, Administrator's Decisions on Appeal, Funding Year 2014-2015.

one would expect schools to request under the E-rate program, such as local and long distance telephone service. In contrast, listed below are the eligible services that the Consortium *did not* include in its Form 470:⁵

- Broadband over power lines
- Cable modem service
- Satellite-based Internet service
- Telephone dial-up service
- 800 service
- Centrex
- Radio Loop
- Interconnected Voice Over Internet Protocol
- Internet access features such as Domain Name Service or Dynamic Host Configuration
- Video components such as: Master Control Unit, PVBX, Video Amplifier, Video Channel Modulator, Enhanced Multimedia Interface

In the Ysleta Order, the Commission stated: “We clarify prospectively that requests for service on the FCC Form 470 that list *all services eligible for funding* under the E-rate program do not comply with the statutory mandate that applicants submit ‘bona fide requests for services.’”⁶ It is clear that the Consortium did not request bids on all eligible services. The information provided by the Consortium to USAC regarding this fact was completely ignored by USAC. Therefore, it was an error for USAC to have categorized the Consortium’s Form 470 as “encyclopedic” or “generic” and the Commission should reverse the denials on this basis alone.

As demonstrated in this Request for Review, our Form 470 was far from being “encyclopedic.” Because the Information Request incorrectly referred to Form 470 No. 371410001160074, which *does not* belong to the Consortium, it is possible that USAC was

⁵ In its appeal to USAC, the Consortium accidentally listed the following services as not having been included in the Form 470: DSL, fiber/dark fiber, web hosting, firewall, basic installation instruction training, mobile hotspot, and paging. This was an inadvertent error. However, as demonstrated herein, there were numerous other eligible services that were not included in the Form 470.

⁶ *In the Matter of the Request of Review of the Administrator’s Decision by Ysleta Ind. Sch. Dist. et al.*, CC Docket Nos. 96-45, 97-21, Order, FCC 03-313, 18 FCC Rcd 26407 ¶ 36 (2003) (“Ysleta Order”) (emphasis added).

looking at the incorrect form when it concluded that our Form 470 No. 296310001099228 was encyclopedic.

IV. THE ELIGIBLE SERVICES LISTED ON THE CONSORTIUM'S FORM 470 ARE LINKED IN A REASONABLE WAY TO THE TECHNOLOGY NEEDS OF ALL OF ITS MEMBERS.

In its Form 470, the Consortium sought bids for five separate private Catholic schools. Each school is different and the technology needs and solutions that might work for one school may not work for another. Therefore, the Consortium selected the services to include in the Form 470 based on the technology needs of all its members as set forth in each of their technology plans. Attached as Exhibit G are copies of the technology plans of the Consortium's members.

While the technology plans demonstrate that all members had a need for increased Internet speed, on-campus wireless connectivity, and the purchase of servers and networking equipment, each technology plan is tailored to the specific needs of each member. For instance, Colegio San Carlos identified the goal of replacing an obsolete switchboard with a Voice over Internet Protocol system, which the other members did not specify in their plans. Academia Inmaculada Concepción Elemental and Academia Inmaculada Concepción Superior specified the need for increased Internet speed through a dedicated T1 line because they are located in the Municipality of Mayaguez on the southwest region of the island, where wireline connections are more reliable. The other members did not specify dedicated T-1 lines. Only 5 percent of Colegio San Carlos' campus had wireless connectivity, while 95 percent of Colegio Católico Notre Dame Secundario's campus had such connectivity. Therefore, Colegio San Carlos' need to increase on-campus wireless connectivity from 5 percent to 100 percent is different from the need of Colegio Católico Notre Dame Secundario. Because they serve students of different age groups with differing needs for online content and interaction, Colegio Católico Notre Dame

Elemental specified the need to increase Internet speed from 3 Mbps to 6 Mbps, while Colegio Católico Notre Dame Secundario sought to increase Internet speed from 10 Mbps to 20 Mbps. These are all important differences and distinctions that the Consortium could not ignore, and are what caused the Consortium to include a number of eligible services in its Form 470.

The fact the Consortium's Form 470 was responsive to the technology needs of all of its members does not render the Form 470 "encyclopedic" or "generic." If the Consortium failed to include in the Form 470 a particular service that may reasonably represent the most cost-effective solution for one school consistent with that school's technology plan, that school would either be prohibited from seeking support for that service in its Form 471, or the Consortium would be required to amend the Form 470, which may not be feasible depending on the deadline for the submission of the Forms 470. This careful balancing act is unique to consortia applicants trying to facilitate the application process for a group of applicants with diverse technology challenges and needs. This balancing act is consistent with the steps the Commission has taken to reduce or eliminate barriers to applicants' participation in consortia. By issuing the COMADs and denying its appeal, USAC has both ignored the fact that the Form 470 was based on the technology needs and plans of each member of the Consortium and effectively denied the Consortium the flexibility it needs to make the E-rate process an efficient and cost-effective one. This is contrary to the Commission's policies.⁷

In this case, the services included in the Consortium's Form 470 are linked in a reasonable way to the technology needs of each Consortium member. For instance, Colegio

⁷ See *Modernizing the E-rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99, 29 FCC Rcd 8870 ¶ 168 (July 23, 2014) ("In this section, we reduce or eliminate some of the existing barriers to applicants' participation in consortia. As an initial matter, we direct Commission staff to work with USAC to prioritize review of consortia applications. We also adopt rules to make it easier for applicants to take advantage of consortium bidding and clarify some apparent misconceptions about consortia participation.").

Católico Notre Dame Secundario's technology plan states that one of the technology goals for the 2013-2014 school year is to increase Internet speed from 10 Mbps to 20 Mbps. To accomplish this goal, the Consortium included in the Form 470 basic conduit access to the Internet either through DSL or fiber/dark fiber technology as well as necessary services to benefit from such a connection such as e-mail service. To protect against unauthorized use and access, the Form 470 specified basic firewall protection. Because installation and instruction are essential services, the Form 470 specified both Internet installation and setup and basic installation instruction training. Another technology goal was to increase wireless connectivity within the school from 70 to 100 percent. As the school's technology plan states, "the expansion of our wireless network to 100% is one of the most important ones because it will allow us to bring the Internet to each one of our classrooms and, in that manner, teachers will be able to implement interactive courses and exercises."⁸ Based on this identified need, the Form 470 included mobile hotspot service. The same process was conducted for the other members in accordance with their technology plans.

It is not the Consortium's position that the list of services in its Form 470 was "perfect." Perhaps another applicant would have crafted a somewhat different list of service descriptions. However, the Consortium met the Commission's expectation that applicants "do their homework" in determining which products and services its members required in a manner consistent with their technology plans. Indeed, the individual technology plans were the lodestar for the Consortium in crafting its Form 470. The Consortium evaluated the technology plans of each its members and based the Form 470 on the stated goals in each plan. The Consortium used the information available to it in the best way it could and in a manner consistent with the Commission's rules and policies. Furthermore, the fact that multiple proposals by different

⁸ See Exhibit G, Colegio Católico Notre Dame Secundario's Technology Plan, page 12.

service providers were received demonstrates that the Form 470, in fact, served its purpose---it provided sufficient information to enable bidders to reasonably determine the needs of our members.

V. CONCLUSION

USAC's decisions do not address the arguments and evidence presented by the Consortium in its appeal or the reasons why those arguments and evidence were found not to be persuasive. In doing so, USAC ignored a great deal of evidence that the Consortium did not file a generic or encyclopedic Form 470 because the Form 470 did not list all of the services in the ESL. In addition, as demonstrated herein, the service descriptions on the Form 470 were linked in a reasonable way to the technology needs of each Consortium member. The Consortium's only sin is that it misunderstood a USAC question because USAC's questions were in English and the employees who responded to USAC's questions are native Spanish speakers who do not usually speak, read or write English. Rescinding all of the members' funding commitments on the basis of an honest misunderstanding caused by a language barrier is neither required by the Commission's rules nor consistent with the Commission's values and desires as evidenced in its policy of helping applicants succeed with the E-rate Program. If left undisturbed by the Commission, USAC's decisions will have a disastrous impact on our members' ability to continue to bring technology into the classroom for the benefit of students in one of the most impoverished areas of the United States.

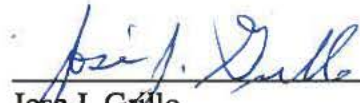
Finally, the Consortium asks the Commission to take into consideration the fact that it adhered to all core program requirements. The Consortium and its members submitted the required application forms within the requisite deadlines, waited the requisite twenty-eight (28) days before selecting a service provider, conducted a fair and open competitive bidding process,

complied with all Puerto Rico procurement processes, and did not engage in waste, fraud or abuse, or misuse of funds.

For these reasons, the Consortium respectfully requests the Commission reverse the adverse decisions by USAC with respect to the referenced FRNs for Funding Year 2014 filed by members of the Consortium.

Respectfully submitted,

**CONSORTIUM COLEGIO CATÓLICO NOTRE
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